



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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ISSUE OF WHO WILL BE LEGAL ADVISOR TO THE CITY'S RETIREMENT BOARD IS HEADED TO TRIAL *SUPERIOR COURT JUDGE ALSO UPHOLDS AGUIRRE'S FREE SPEECH RIGHTS*

San Diego, CA: A Superior Court Judge ruled today that the San Diego City Employees' Retirement System (SDCERS) is entitled to separate legal representation in order to determine who will be the Chief Legal Advisor to SDCERS. Superior Court Judge Jeffrey Barton said, "This ruling applies to the instant dispute in this case."

"The issue of who will provide legal services to SDCERS will be decided in a trial next year," said Executive Assistant City Attorney Don McGrath. "The City Attorney needs to take back the helm. No one can agree with the dismal track record of the SDCERS attorneys whose actions have resulted in a \$1.7 billion pension deficit and a refusal to waive the attorney-client privilege, which has crippled the City from completing its 2003 audit."

On December 15, 2004, City Attorney Michael Aguirre notified SDCERS that he was asserting the City Attorney's authority, under Section 40 of the San Diego City Charter, to assume the role of chief legal advisor. The action terminates the 1998 Memorandum of Understanding agreement between the City of San Diego and SDCERS which was enacted by former City Attorney Casey Gwinn.

The Judge also took under submission the City's ability to place SDCERS into receivership as a future option. The City Attorney's Office argued that based on the fact that San Diego taxpayers are ultimately responsible for resolving the \$1.7 billion pension deficit, the City does have an interest in the fund. SDCERS argued the opposite.

The Court also permanently denied SDCERS efforts to prevent City Attorney Michael Aguirre from expressing his first amendment right to state that he is the appropriate legal advisor to SDCERS. Judge Barton struck down the request for a permanent injunction because it restrains a public official from discussing his position on the issues. The Court also issued a protective order that prohibits SDCERS from interfering with the City Attorney's freedom of speech rights.

Today's Court decisions were part of a pre-trial hearing to define the issues to be tried in court which include the rolling back of "illegal pension benefits."

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